

level approaches are appropriate to reflect differences in the competitive pressures that can be brought to bear on these two traffic categories. As discussed above, if the Local Competition Order is fully implemented, then originating access eventually may become subject to increasing competitive pressure in the future. By contrast, terminating access is never likely to be subject to competition. We address the issues in the following order: first the rate structure and then the rate levels for terminating access traffic; and next the rate structure and then rate levels for originating access traffic.

Rate Structure -- Terminating. WorldCom does not oppose retaining the existing per-minute rate structure for recovering the shared costs of the local switching processing system and the trunk-side ports. Most negotiated (non-arbitrated) arrangements for local transport and termination of traffic have structured this element as a per minute charge, which appears to be a convenient rate structure for terminating traffic for both incumbent LECs and interconnecting local carriers. ^{54/} In principle, this charge -- as well as most other interstate access charge rate elements -- should be structured (and, to the extent possible, priced) in a manner that is consistent with the structure and pricing of comparable unbundled network elements or other provisions of local interconnection arrangements.

^{54/} MFS has entered voluntary reciprocal compensation agreements with all seven RBOCs that provide for compensation for transport and termination of local calls on a per minute basis.

Rate Level -- Terminating. As discussed above, WorldCom believes that, as a baseline matter, prescriptive rate level changes should be focused first where competition is least possible. The terminating traffic component of local switching is one example. As noted above, terminating access is likely to be a long-term bottleneck monopoly. There is thus no reason to expect a market-based approach to have any effect on incumbent LECs' terminating local switching rates, either in the short run or in the long run.

WorldCom recommends re-initializing the terminating rate for the shared costs of terminating local switching based on a forward-looking cost based approach, consistent with the cost-based pricing rules adopted in the Local Competition Order. To simplify this process, the Commission could direct all incumbent LECs to re-initialize their terminating local switching access rates somewhere within the proxy rate range that the Commission adopted in the Local Competition Order -- between 0.2 cents and 0.4 cents per minute. ^{55/} Incumbent LECs could overcome the presumption that this proxy is accurate by presenting a well-developed cost study, using either a TSLRIC/TELRIC or a price cap new services test cost standard. In either case, the most easily manipulated element of

^{55/} See Local Competition Order, ¶ 811. Unlike the flat rate charge for line-side switch ports, there is no need to devise an interim separations fix to establish cost-based rates for this charge. Separations allocates these costs between jurisdictions on a per-minute basis, and the per-minute charge at issue here will apply only to interstate terminating minutes.

such a cost study is the common cost factor (in a TSLRIC/TELRIC study) or the “overhead loading factor” under the price cap new services test. The Commission must be extremely vigilant and careful to prevent the incumbent LECs from exploiting this factor.

Given the different treatment of the terminating and originating rates to recover the shared costs of local switching, we recommend that the Commission sever these into separate price cap service categories. Separate service categories are very simple for the incumbent LECs and the Commission to administer, and are appropriate where different services have very different competitive characteristics. 56/ WorldCom has already demonstrated the different competitive characteristics of originating and terminating access charges for local switching.

Rate Structure -- Originating. For originating traffic, WorldCom believes that a number of the rate structure alternatives set out in the Notice might be reasonable. 57/ The Commission should gather additional empirical information to assess the relative reasonableness of flat rate charges (presumably per presubscribed line), per query charges, and per minute charges. In assessing this empirical evidence, however, the Commission should keep in mind that the rate

56/ See Transport Rate Structure and Pricing, Second Report and Order, 9 FCC Rcd 615, 625-27, ¶¶ 16-25 (1994) (recognizing some of the competitive benefits of separate service categories and indicating that service categories limit the ability to offset certain elements by overpricing others).

57/ Notice, ¶¶ 72-79.

structure of the originating local switching component of access charges should be consistent with the rate structure of the local switching unbundled network element in local interconnection arrangements. In turn, it is critical that the local switching unbundled element be structured in a way that ensures that carriers using it can derive whatever services they want, without paying the incumbent LEC a “tax” for traffic they generate or other services they use.

Rate Level -- Originating. We are not advocating a prescriptive approach, initially, for the rate to recover the shared cost of local switching for originating access traffic. Indeed, the price cap system provides relatively simple tools for setting the rate level. As discussed above, the new, non-traffic sensitive rate element for the line-side port element will have to be established based on a cost showing, and we advocate a prescriptive approach to initialize the rate for terminating shared local switching based on forward looking cost. The rate for originating shared local switching can thus be initiated as a revenue neutral rate restructure, such that the incumbent LECs’ projected revenue from all three of these elements during the first year is no less than it would have been if a single, traffic sensitive local switching rate had been retained. This approach is administratively simple, and avoids any possible allegations that this approach will create any “stranded” embedded local switching costs for the incumbent LECs.

3. The Information Surcharge Should Be Eliminated or Made Cost-Based.

According to an ex parte filing submitted by Ameritech before the issuance of the Notice, the information surcharge is assessed to purchasers of interstate switched access on a per minute of use basis, and recovers the costs of white pages directory production. 58/ To the extent that this is correct, WorldCom submits that this charge should be eliminated as a carrier access charge, and should be transferred to the common line element and recovered through flat rate charges to end users. The cost of white pages directories should be borne directly by the end user, who benefits by enabling callers to reach him or her. (To the extent that this charge is maintained as a charge to IXCs, it should be flat rate and the Commission should forbear on enforcement of Section 254(g), for the same reasons as discussed above.)

On the other hand, to the extent that the information surcharge recovers the incumbent LECs' cost of providing directory assistance service to long distance companies, WorldCom does not object to a reasonably cost based charge per query.

58/ "Ameritech Access Reform Proposal," p. 5, attached to Letter from Gary R. Lytle, Vice President, Federal Relations, Ameritech, to Regina Keeney, Chief, Common Carrier Bureau, FCC (dated Dec. 5, 1996) (entered as an ex parte in CC Docket No. 96-262 on Dec. 24, 1996).

C. Trunking Facilities.

[Notice, Section III-D]

1. No Changes Are Needed for Special Access at This Time.

WorldCom believes that no prescriptive changes are needed to the rate structure or rate levels of interstate special access. As discussed further below, however, we also believe strongly that no further relaxation of the existing, already very lax regulation of special access is appropriate until incumbent LECs have made a further showing regarding the potential and actual development of competition. In order to give the incumbent LECs incentives to cooperate in measures that facilitate local competition, the Commission should grant no further pricing flexibility until, at a minimum, incumbent LECs have fully complied with the pricing and other provisions of the competitive checklist. For similar reasons, the Commission should retain the existing regulatory distinction between special access and switched transport, and the additional restrictions on switched transport pricing (i.e., rate structure restrictions and volume and term discounts contingent on a certain amount of expanded interconnection cross-connects being provided), within the “base case” competitive scenario.

2. The Commission Should Not Revisit the Non-Remanded Issues Resolved in the Transport Rate Structure and Pricing Proceeding.

The Commission recently concluded the highly contentious and difficult Transport Rate Structure and Pricing proceeding (“Transport”). ^{59/} With the exception of the issues remanded by the U.S. Court of Appeals for the D.C. Circuit in Competitive Telecommunications Association v. FCC (“CompTel v. FCC”), ^{60/} the Commission need not and should not squander its limited resources to revisit in this proceeding the plethora of issues so recently addressed in that proceeding. (Specifically, the CompTel v. FCC court remanded for further consideration the Commission’s decisions in the Transport proceeding on the rate levels of the tandem switching charge and the transport interconnection charge.)

The instant generic access reform proceeding is one of the central components of the “competition trilogy” in the Commission’s implementation of the 1996 Act, and raises some of the most important and difficult issues facing the

^{59/} See Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006 (1992), recon., First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 5370 (1993), further recon., Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 6233 (1993), further recon., Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking, 10 FCC Rcd 3030 (1994); further recon., Fourth Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 12979, FCC No. 95-404 (Sept. 22, 1995); rev’d in part sub nom. Competitive Telecommunications Ass’n v. FCC, 87 F.3d 522 (D.C. Cir. 1996).

^{60/} 87 F.2d 522 (D.C. Cir. 1996).

telecommunications industry. It simply makes no sense, in the context of a proceeding to resolve these fundamental questions, for the Commission to get bogged down in rehashing the old issues from the Transport proceeding.

In the initial Report and Order, the four reconsideration orders, and the Second Report and Order in the Transport proceeding, the Commission resolved a wide range of issues. These decisions satisfied no party completely, but essentially struck a reasonable, "rough justice" compromise among the parties on most of the contested issues that -- with the exception of the two issues remanded by the CompTel v. FCC court -- resulted in a local transport restructure that, as an overall matter, served the public interest. The local transport restructure took several years and a great deal of effort for the LECs and IXC's to implement.

To be perfectly frank, while WorldCom was pleased by the way many of the issues in the Transport docket were resolved and was quite disappointed by the way others were resolved, we are very reluctant to re-fight those old battles. If need be, of course, we will re-fight those battles vigorously -- and we believe that, if anything, the public interest case for many of our views is even stronger at this point. But we believe that the Commission and all parties would be much better off leaving well enough alone.

Accordingly, with the notable exception of the tandem switching rate and the TIC, WorldCom will not address the transport rate structure and pricing issues raised in the Notice in detail in these comments. To be very brief, WorldCom supports retaining the major decisions from the Transport proceeding: using the

price cap system (with separate service categories in the trunking basket), rather than a prescriptive approach, to govern rate levels for entrance facilities, direct-trunked transport, and tandem-switched transport; and retaining the existing rate structure for entrance facilities and direct-trunked transport, and both of the existing rate structure options for tandem-switched transport. 61/ We do, however, submit the following general observations:

First, the Commission should recognize and take account of the technological changes that have occurred in the past few years, since the period when the Transport decisions were under consideration (and even during that period). The Transport decisions essentially accepted as a given the larger incumbent LECs' network configuration in existence at the end of the 1980s; a graphic depiction that models this network configuration was used time and again in the Transport proceeding, and is even included in the Notice in this proceeding. 62/ Yet this model does not reflect the way incumbent LECs provide interoffice transport in the late 1990s:

- The incumbent LECs' interoffice networks are virtually all fiber now, and certainly all fiber on a forward-looking basis, often using a synchronous

61/ While there are some elements of this package of transport rate structure and pricing decisions that WorldCom believes do not serve the public interest, we support retaining this package of issue resolutions as an overall matter. However, to the extent that that Commission or other parties specifically address any individual element of this package, WorldCom reserves the right to revisit that or any other individual element, and to clarify our views on specific issues.

62/ Notice, Figure 1 (following ¶ 24).

optical network ("SONET") ring architecture rather than the hierarchical "pyramid" architecture depicted in Figure 1 of the Notice.

- Actual transmission paths are almost never routed based on the straight-line distances between central offices; rather, dynamic routing is used, and transmission paths often traverse numerous central offices.
- Capacity on interoffice networks is shared between dedicated and common access transport and local interoffice transport, and electronic equipment defines what are essentially "virtual" dedicated circuits based on time slots within very high capacity, multiplexed optical transmission pipes; so-called "dedicated" or direct-trunked transport does not use truly dedicated facilities at all.

Second, to the extent that the Commission decides to revisit the transport rate structure rules -- and we reiterate that we do not believe it would make sense to revisit those rules at this point -- it should focus on creating more cost-based options for access customers, rather than restricting the range of choices. In addition to the two existing options for tandem-switched transport, the Commission could consider requiring the incumbent LECs to offer additional options. For example, the Commission could not only permit incumbent LECs to offer a service option such as the "Facilities Management Service" that Bell Atlantic proposed in 1994 to offer to both direct-trunked and tandem-switched transport users; 63/ the Commission could require the ILECs to offer such service options.

63/ See Waiver of the Commission's Access Charge Rules, Bell Atlantic Telephone Companies Petition for Waiver [of] Part 69.112(b) and (c) of the Commission's Rules to Offer Facilities Management Service, Order, DA 96-2185 (Com. Car. Bur., released Dec. 26, 1996) (denying waiver petition).

Third, the Commission should consider the relationship between the rate structure and pricing standards for: (1) transport as an interstate access service; (2) transport as a component of local transport and termination pursuant to Section 251(b)(5); and (3) transport as an unbundled network element pursuant to Section 251(c)(3). Of course, the same physical transmission facilities are used under all three of these scenarios, but interconnecting carriers use the offerings differently. For interstate access service, carriers need to connect traffic in both directions to and from a particular point, the carrier's point of presence. For local transport and termination, carriers need transport only in the terminating direction from the point of interconnection between the incumbent LEC's network and the competing carrier's network, to all other points in the incumbent LEC's network. By contrast, when transport is used as an unbundled network element in conjunction with the local switch platform, competitive carriers need transport for connections from, potentially, every end office in the incumbent LEC network to every other end office. (WorldCom has sought clarification and/or reconsideration of the Commission's definition and characterization of "common transport" as an unbundled element in the Local Competition proceeding.)

Similarly, the Commission should consider the implications of the forward-looking cost theory it adopted in the Local Competition Order for transport pricing. The TELRIC methodology takes as a given the topology of (i.e., the location

of central offices in) the incumbent LEC network, but examines cost based on the most efficient deployment of network facilities based on that existing topology. 64/ Thus, for example, a TELRIC cost study would assess the forward-looking cost of tandem switching based on the most efficient number and locations of access tandem switches, given the existing layout of central offices. The actual number and locations of an incumbent LEC's access tandem switches would be irrelevant in a TELRIC analysis.

3. Tandem Switching Rates Should Be Re-Initialized Based on Forward-Looking Cost.

Given the CompTel v. FCC remand, the Commission must address the pricing of tandem switching in this proceeding. In the Transport proceeding, the incumbent LECs had argued for setting the prices for tandem switching based on 100% of the embedded costs allocated to the interstate jurisdiction (minus a few relatively minor costs that clearly had been allocated to the tandem element in error); the small and medium size IXC's had argued for setting the price based on forward-looking costs. The Commission's resolution -- setting the initial price level based on 20% of the embedded costs allocated to the interstate jurisdiction -- satisfied no one and ultimately was found by the court to be arbitrary and capricious.

64/ Local Competition Order, ¶¶ 685, 690.

Much has happened between 1992, when the Commission initially selected the 20% figure, and 1997. Of the greatest significance is the Commission's decision in the Local Competition Order, grounded in the statutory language of the 1996 Act, that the optimal way to set prices for interconnection offerings and unbundled network elements is based on forward-looking costs rather than historical embedded costs. ^{65/} It is inconceivable that the Commission could justify any approach for setting initial price levels for tandem switching other than forward-looking costs.

Indeed, the Commission not only adopted a general forward-looking pricing principle in the Local Competition Order; it also specifically addressed tandem switching when used as an unbundled network element, and adopted a maximum proxy rate for that element of 0.15 cents per minute. WorldCom submits that the Commission should use the same proxy ceiling for tandem switching as a rate element of interstate access service. The physical facilities are the same; the rate structure (per minute) is the same; there is really no rational basis for treating tandem switching as unbundled network element differently from tandem switching as an access rate element. Incumbent LECs should be directed to re-initialize their tandem switching rates, either at 0.15 cents per minute, or based on

^{65/} See id., ¶ 705.

a forward-looking cost study, with a higher burden of cost justification required for proposed rates in excess of 0.15 cents per minute.

The CompTel v. FCC court specifically remanded the question of the difference between the allocation of overhead loadings to tandem switching and the allocation to other transport rate elements, such as high capacity direct-trunked transport. In response to that remand, WorldCom believes that the Commission must impose special requirements on the cost studies used to justify re-initialized tandem switching rates. To ensure that the incumbent LECs do not engage in unreasonable discrimination in the allocation of overheads (or, for a TSLRIC/TELRIC study, the allocation of forward-looking common costs) to tandem switching as opposed to other transport elements, WorldCom submits that the Commission should use the methodology commonly known as “lowest of the low” used in the expanded interconnection tariff investigations. In other words, as in the Commission’s investigation of the incumbent LECs’ expanded interconnection tariffs, 66/ the Commission should require that the incumbent LECs show that the allocation of overhead loadings (or common costs) to the tandem switching rate is no greater than the allocation of such overhead loadings (or common costs) to the comparable transport service to which the lowest amount of overheads/common

66/ Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, 10 FCC Rcd 6375, ¶¶ 73-74 (1995).

costs have been allocated. To enforce this requirement, it is necessary to examine the allocation of overheads/common costs to other specific transport services, as well as the allocation to tandem switched transport. The Bureau has experience with conducting this type of analysis.

We tentatively support making the rate structure for tandem switching the same as that for local switching, although, as with local switching, it is necessary to gather empirical data regarding how tandem switching costs are incurred. We believe that per minute rates are the only feasible way to set terminating tandem switching rates, but we are open to the possibility of flat rate (capacity sensitive), per message, or per minute rates for originating tandem switching. On this point, we refer to our discussion of the local switching rate structure above. ^{67/} Given the shared characteristics of the interoffice transmission network, particularly in the use of tandem switching, we do not believe it would be feasible or appropriate to attempt to separate out switch port charges from tandem switching.

D. Common Channel Signaling System Seven (“SS7”).

[Notice, Section III-F]

In the Notice, the Commission seeks comment on removing costs associated with ILECs’ SS7 networks from the transport interconnection charge,

^{67/} See supra Section II.B.2.

and instead recovering such costs through a rate structure such as that established by Ameritech pursuant to a waiver from the Common Carrier Bureau. WorldCom endorses the removal of SS7 costs from the transport interconnection charge. But instead of creating a new rate structure to recover such costs, the Commission should remove these costs from carrier access charges altogether.

First, in today's network of telecommunications networks, all interconnecting carriers need to deploy SS7 systems, both for efficient routing and transmission of their own traffic and traffic to and from interconnected carriers, and for the provision of services to their customers. Importantly, virtually all IXC's operate SS7 networks, and the ILECs with which they interconnect benefit from the existence of those networks. Yet IXC's do not seek to recover their SS7 costs from ILECs. Under the "network of networks" paradigm, WorldCom submits, each carrier should bear its own costs in connecting to other carriers.

It is true that LECs' SS7 networks provide benefits to interconnected IXC's, but IXC's SS7 networks provide similar -- possibly greater -- benefits to the incumbent LECs with which they interconnect. For example, IXC's SS7 networks enable incumbent LECs to provide highly profitable vertical services to their own customers, such as Caller ID, selective call forwarding, call return, and others, all of which depend on information transmitted over IXC's SS7 networks. Not only do IXC's not seek to recover these costs from incumbent LECs, the Commission has forbidden the IXC's from recovering the costs of transmitting such information from the LECs. The Commission justified this policy, in the context of Caller ID, based

on two propositions: (1) IXC's are deploying SS7 networks anyway to improve their own networks' efficiencies and for other reasons; and (2) the costs of transmitting information that benefits LECs is de minimis. ^{68/} The same arguments support forbidding the incumbent LECs from charging the IXC's for interconnection to SS7 networks.

Indeed, recovery of SS7 costs through interstate access charges would enable incumbent LECs to double-recover those costs, because they are already fully recovering the costs of their SS7 networks -- and much more -- through rates for vertical services that they offer their subscribers. These rates typically far exceed the cost of service. While such vertical services have traditionally been treated as intrastate services for regulatory purposes, the Commission has acknowledged on a number of occasions that such services have interstate as well as intrastate aspects. ^{69/} Pending revision of the separations rules, the Commission should recognize that, as a de facto matter, incumbent LECs are already recovering the SS7 costs that are allocated to the interstate jurisdiction from their (primarily

^{68/} Rules and Policies Regarding Calling Number Identification Service -- Caller ID, CC Docket No. 91-281, Report and Order, 9 FCC Rcd 1764, 1768, ¶ 23 (1994), aff'd on recon., 10 FCC Rcd 11700, 11712-17, ¶¶ 30-44 (1995). The LECs' arguments in favor of the Commission's conclusion are particularly instructive: see 10 FCC Rcd at 11711-12, ¶¶ 27-29.

^{69/} Id.; Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992), aff'd without opinion, Georgia Public Service Comm'n v. FCC, 5 F.3d 1499 (11th Cir. 1993).

intrastate) vertical service offerings. These costs should be removed from the transport interconnection charge, and the incumbent LECs should not be allowed to recover them from access customers. 70/

E. Transport Interconnection Charge.

[Notice, Sections III-E and VII]

1. The Commission Must Not Establish Guarantees that Shield Incumbent LEC Revenues From Competition.

In WorldCom's view, there is no more important issue in this proceeding than the elimination of the transport interconnection charge ("TIC"), and of any other mechanism that would shield incumbent LECs' revenues from competition. The existing TIC is an artifact of the Commission's decision in the Transport proceeding to adopt as a policy goal "revenue neutrality" for the incumbent LECs. In the discussion below, we show that it would be a dreadful blunder -- and contrary to the law -- for the Commission to adopt that same flawed reasoning in this proceeding (and in fact, that the Commission is under a legal mandate, under the CompTel v. FCC remand, to undo its original policy

70/ To the extent that incumbent LECs offer specialized SS7-based "Advanced Intelligent Network" services that they themselves use, or that may be used by other carriers or information service providers, for purposes other than simply originating and terminating calls and passing identifying information to facilitate transmission, billing, and related services, those issues should be addressed in context of the pending Intelligent Networks proceeding.

prescription). We also recommend rate level and rate structure changes that would remedy the problem with the existing TIC.

The worst thing the Commission could do in this proceeding would be to create some new mechanism to ensure that incumbent LECs recover revenues shielded from the pressures of competition. Whether such a mechanism is called an “interconnection charge,” “bulk billing,” or a so-called “competitively neutral assessment” (a characterization WorldCom vigorously disputes), any such approach would actually severely damage competition in the marketplace for interexchange, local exchange and access, and emerging full-service service offerings:

Interexchange competition: A fund that ensures incumbent LECs recovery of access revenue without competition would ensure that uneconomic access charges, which lead to high long distance rates that harm consumers, are continued in perpetuity. The discipline of competitive pressure is the best way to reduce access charges. A mechanism that insulates incumbent LEC revenue from competition would eliminate such discipline.

Local exchange and access competition: A fund that shields incumbent LECs’ revenue streams from competition makes it difficult or impossible for new carriers, with no comparable guaranteed revenue stream, to compete against those carriers. If such a revenue stream is made available, incumbent LECs would be free to use it to cross-subsidize services for which they face competition.

Full service competition: Integrated providers of full-service telecommunications, including both interexchange and local services, would suffer

from all the problems enumerated above. Moreover, as the incumbent LECs seek to provide long distance service and become full-service providers themselves, the effect of such a revenue-guaranteeing mechanism would become particularly pernicious: it would impose a revenue transfer from competing providers of long distance and local service to their incumbent LEC competitors, and thus create a formidable barrier to entering markets. It would also have the effect of creating a “price squeeze,” since it would enable incumbent LECs, but not competing carriers, to offer long distance service at relatively low rates even while retaining high access charges.

Effect on consumers: The effect of such an anti-competitive mechanism on consumers would be devastating, both immediately and in the long run. First, it would ensure that long distance rates never come down, because uneconomic access charges would be perpetuated indefinitely. Second, it would prevent consumers from realizing the benefits of local and full-service competition, which ultimately should lead to lower rates, technological improvements, and improved service quality for all telecommunications offerings.

2. The Transport Interconnection Charge Should Be Eliminated As Rapidly As Possible, And Structured to Avoid Interference with Competition.

Several conclusions follow from the view set forth. First, unlike some of our fellow long distance carriers, WorldCom does not necessarily recommend that the Commission undertake an aggressively prescriptive approach at this time to reduce all access charges to forward-looking economic cost within a relatively short

time frame. While we would welcome forward-looking cost-based access charges, we are more concerned that such an approach would result in a large residuum of unrecovered revenues by comparison with current access rates, which in turn would create pressure for a mechanism to recover such residual revenues in a manner that is shielded from competition. Nor do we favor a “competitively neutral” fund that all carriers would pay into, even if all carriers are eligible to draw from such a fund. 71/ We believe that a superior alternative -- and one that is dictated by applicable law -- is to require that, with the exception of explicit universal service support funding pursuant to Section 254, any revenues that incumbent LECs, or any other providers, receive be collected through charges for actual services that they offer to their carrier or end user customers. That is, like all other businesses, incumbent LECs must receive revenues from selling services to customers, not from special regulatory funds that are insulated from market pressures.

The incumbent LECs have no legal right, or policy rationale, for establishing a guaranteed revenue flow, protected from competition. No regulated carrier has a right to guaranteed recovery of the costs it has invested. Rather, regulated utilities have a right only to a reasonable opportunity to recover a

71/ If such a fund were created, however, we would of course clearly support establishing a right for competing providers, as well as incumbent LECs, to draw from it. This would ameliorate some of the anti-competitive consequences of shielding the revenues from competition.

reasonable return on their investments. ^{72/} WorldCom believes that the incumbent LECs have had, and should continue to be allowed, a reasonable opportunity to earn a reasonable return on their investments through the rates they charge for services -- not through some guaranteed mechanism outside their rates. (Indeed, to date, they have earned quite a handsome return on their monopoly access service offerings -- a level of return to which they certainly have no entitlement as a continuing matter.) In the future competitive marketplace, however, incumbent LECs should continue to recover revenues only to the extent that they retain customers. The incumbent LECs have no entitlement, and should not be allowed, to recover revenues from customers who have chosen to take service from alternative carriers, either directly or indirectly via such carriers.

Indeed, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, appears to preclude the establishment of such a funding source insulated from competition. Section 254 authorizes the establishment of such a fund only for the purpose of supporting universal service --

^{72/} See FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 590 (1942) ("regulation does not insure that the business shall produce net revenues . . . for the obvious reason that the hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated, business"); FPC v. Hope Natural Gas Co., 320 U.S. 591, 602-03 (1934); Duquesne Light Co. v. Barasch, 488 U.S. 299, 307-16 (1989). See also Transwestern Pipeline Co. v. FERC, 820 F.2d 733, 742 (5th Cir. 1987) (affirming FERC decision to "refuse[] to protect [the utility's] profit from competition"); Communications Satellite Corp. v. FCC, 611 F.2d 883, 893 (D.C. Cir. 1977).

not to support a permanent revenue flow for one class of carriers. Moreover, Sections 201 and 202 authorize the Commission to establish just and reasonable rates “in connection with such communications service” 73/ -- not rates that are not in connection with any communications service. Establishing a charge independent of any communications service, and with no universal service-related purpose, would be even more arbitrary and capricious than the TIC that the CompTel v. FCC court rejected.

While WorldCom believes that incumbent LECs should not be allowed to recover embedded costs that would not be recovered by access rates based on forward-looking costs, to the extent that the Commission decides that incumbent LECs should be able to recover some of these costs, it should do so in a way that avoids skewing competition. First, and most critically, any such recovery should be structured in such a way that the incidence falls on end user customers that opt to take service from incumbent LECs rather than competing local carriers. If a customer opts to take service from a competing carrier rather than the incumbent LEC, then neither that customer nor the competing carrier should be burdened by recovery of incumbent LECs’ embedded costs.

Second, to the extent that the Commission permits a TIC or any alternative recovery mechanism to exist, it must establish, in advance, a specific

73/ 47 U.S.C. § 201(b).

plan to eliminate such a charge in short order. WorldCom would support a transition schedule of no more than two years, and preferably shorter.

Third, the Commission should establish a rule that incumbent LECs will not be allowed any additional pricing flexibility until the charge is eliminated. Nor, in the case of RBOCs, should they be allowed to enter interLATA markets pursuant to Section 271. Any residual cost recovery mechanism simply causes too much harm to local, long distance, and full service competition to be consistent either with forms of pricing flexibility for local services, or with the ability of incumbent LECs (or their affiliates) to become an integrated full-service provider in the local and in-region interLATA marketplace.

3. To Maximize Competitive Pressure on the TIC, the Rate Structure Should Impose the Incidence of the Charge on Customers Who Choose to Retain Incumbent LEC Service.

The per minute TIC must be eliminated immediately. The current per minute TIC raises long distance rates above economic levels and restricts long distance usage, to the serious detriment of consumers. Instead, the Commission should restructure the TIC rate element (and, for even more compelling reasons, should structure any alternative recovery mechanism) in a manner that maximizes competitive pressure on the charge. As local and full-service competition begin to emerge, competitive carriers should be able to avoid the TIC to the extent that they win customers away from incumbent LECs. This will create competitive pressure

for the LECs to reduce their TIC rate levels, without necessitating any prescriptive action by the Commission.

In particular, WorldCom recommends requiring the incumbent LECs to structure the TIC as a flat rate charge directly on end users. As a less-preferred alternative, the TIC could be structured as a flat rate, per-presubscribed line charge on IXC's, provided it is accompanied with forbearance on Section 254(g) to enable a direct flow-through to end users. At the very least, the TIC should not be imposed on terminating access minutes, which will never be subject to competition. If it is retained as a per minute charge, it should be restructured to apply to originating minutes only.

4. Certain Prescribed Rate Level Changes Should Eliminate the Existing TIC in Short Order.

As discussed above, the Commission should not establish any new residual charge to recover the difference between incumbent LECs' existing revenues and their projected revenues after access reform -- whether any such residuum is characterized as "embedded costs" or in any other way. Moreover, the Commission should abolish the existing TIC as rapidly as possible. In the following section, we recommend some modest prescriptive changes that would facilitate an immediate phase-out of the TIC.

The existing TIC does not "include" any identifiable "costs" per se. Rather, it was created to recover the difference between the preexisting transport revenues that the incumbent LECs had been recovering and the (on the whole,